



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

June 21, 2023

VIA ECF

Honorable Sanket J. Bulsara
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Erick Diaz Cruz v. United States of America and Henry V. Santana*
No. 20-CV-891 (EK) (SJB)

Dear Judge Bulsara:

This Office represents Defendant United States of America (the “government or the “United States”) in the above-referenced action. The United States writes pursuant to the Court’s May 23, 2023 Order to provide an update to the Court about the status of an investigation related to the alleged facts in this case. The government believes that a stay is no longer necessary, but for the reasons set forth below, respectfully requests that the Court allow the government until July 10, 2023 to respond to the Amended Complaint. Plaintiff consents to the government’s request.

By way of background, Plaintiff Erick Diaz Cruz commenced this action on February 20, 2020, against Immigration and Customs Enforcement (“ICE”) Officer Henry V. Santana (“Defendant Santana”), asserting claims pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff alleges that Defendant Santana is individually liable for constitutional violations stemming from a February 6, 2020 incident in which Defendant Santana allegedly shot Plaintiff. *See* Dkt. No. 1. On April 20, 2021, Plaintiff filed an Amended Complaint that, *inter alia*, added claims pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680 against the United States arising from the same alleged shooting. *See* Dkt. No. 29 (“Amended Complaint”).¹

On August 24, 2021, the United States sought a stay of its response both to the Amended Complaint and to discovery requests from the other parties. *See* Dkt. No. 42. The United States requested the stay because the Department of Homeland Security’s Office of the Inspector General (“DHS OIG”) was working with the Criminal Division of the U.S. Attorney’s Office, Eastern District of New York (“Criminal Division”), investigating the alleged shooting

¹ On March 20, 2023, following briefing by Defendant Santana and Plaintiff, this Court dismissed the *Bivens* claims against Defendant Santana, leaving the United States as the sole defendant in this action. *See* Dkt. No. 67 (Court’s Memorandum & Order).

underlying this civil action. On September 20, 2021, this Court stayed discovery in this case. *See* Court's September 20, 2021 Order.

This Court has periodically directed the government to file a status letter concerning the criminal investigation underlying this action and has continued the stay of discovery following each update. *See* the Court's Orders dated January 12, March 15, May 15, July 13, September 16, and November 29, 2022, and January 23, 2023.

By letter on March 24, 2023, the government informed the Court that both the EDNY Criminal Division and DHS OIG had concluded their investigations into the alleged shooting underlying this case in March. *See* Dkt. No. 68 (government's update to the Court and request to continue the stay). In the same letter, the government stated that although DHS OIG had concluded its investigation, it had not yet completed its findings. *Id.*

DHS OIG has completed its findings and this Office is reviewing those findings. Accordingly, the United States respectfully requests until July 10, 2023 to respond to the Amended Complaint.

The government thanks the Court for considering this request.

Respectfully submitted,

BREON PEACE
UNITED STATES ATTORNEY
By: s/ Dara A. Olds
DARA A. OLDS
Assistant United States Attorney
(718) 254-6148
dara.olds@usdoj.gov

cc: All attorneys of record via ECF